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dency to abate somewhat the rigor of the general rule, and have allowed a recovery as for damages caused by maintaining or failing to abate a nuisance. A municipal corporation is bound to keep its streets and sidewalks in a reasonably safe condition, and a failure to perform this duty constitutes a breach of a ministerial duty, and the failure does not rest upon a failure to perform the judicial duty of abating such nuisance. *Mayor of Dalton* v. *Wilson,* 118 Ga. 100, 44 S. E. 830, 98 Am. St. Rep. 101; *Parker* v. *Macon,* 39 Ga. 725, 99 Am. Dec. 486; *Moore* v. *Townsend,* 76 Minn. 64, 78 N. W. 880, 28 Cyc. 1292 (note 38). *Contra, Hubbell* v. *Viroqua,* 67 Wis. 343, 30 N. W. 847, 58 Am. Rep. 866. If it is liable for failure to keep the streets reasonably safe by abating a nuisance when conducted by a private person, it would not seem illogical to hold it liable for failing to abate a nuisance which itself maintains. The right invaded is the right to the safe use of the public streets. For maintaining a nuisance, a municipal corporation has been held to be liable in a civil action the same as a natural person. *City of Valparaiso* v. *Moffitt,* 12 Ind. App. 250, 39 N. E. 909, 54 Am. St. Rep. 522; *City of New Albany* v. *Slider,* 21 Ind. App. 392, 52 N. E. 626. *Contra, Atwood* v. *City of Biddeford,* 99 Me. 78, 58 Atl. 417. And such was the basis of the argument in the dissenting opinion in the principal case. The court, in the prevailing opinion, says that the excavating of rock for street improvements is not a ministerial act but a governmental act, and therefore the municipality is not liable. To say in one breath that a municipal act is absolutely *"ultra vires"* and in the next that it is governmental seems almost paradoxical. Moreover, there is authority for holding that where an undertaking of this kind amounts to a nuisance, failure to abate it is a failure to perform a ministerial duty, for which failure the municipality would be liable. *Dalton* v. *Wilson, supra,* 28 Cyc. 1292 (note 38).

PARENT AND CHILD—NEGLIGENCE OF MINOR—LIABILITY OF FATHER.—Defendant purchased an automobile for the general use of his family but his minor son was the only member of the family licensed to run it. His wife had permission to use the machine whenever she desired, the son being expected to obey his mother if she asked him to take her out in the car. Plaintiff was injured by the machine under circumstances indicating that the son was negligent while driving with his mother and at her request. *Held,* that the father was liable for his minor son's negligence. *Smith* v. *Jordan* (Mass. 1912) 97 N. E. 761.

At common law a parent was not liable for the torts of his minor child merely by reason of their relation, unless it appeared: (1) that the parent directed or counselled the wrongful act; or (2) that he subsequently ratified it; or (3) that the minor, at the time of committing the tort, was acting as the servant of the parent and that the wrongful act was within the scope of such employment. 10 L. R. A. (N. S.) 933. No presumption arises from the mere relationship of parent and child. It must be shown that the child was acting for the parent and with the latter's approval in order to make the parent responsible. *Ferguson* v. *Terry,* 1 B. Mon. 96; *Kumba* v. *Gilham,* 103 Wis. 312, 79 N. W. 325; *Shockley* v. *Shepherd,* 9 Houst. (Del.)

270, 32 Atl. 173. With these principles the Massachusetts court agrees but, having set them out, it finds that the minor was on his father's business and within the scope of his employment. Says the court: "The relation of husband and wife is such that when the former has bought an automobile for family use, a ride by the wife in it, with his general permission, is not as a matter of law, the business of the wife but may be found to be the business of the husband." In support of this conclusion it cites *Bourne* v. *Whitman*, 209 Mass. 155, 95 N. E. 404 and *Hunt* v. *Rhodes Bros. Co.*, 207 Mass. 30, 96 N. E. 1001. Neither of these is in point, the first being an action against a son and father growing out of the use of the car by the son. In it the real question was the construction of certain automobile road and license laws, and it was incidentally stated that there was evidence enough of the son's being in his father's employ, to go to the jury. The second of these decides that the obligation of the husband to support his wife does not, as a matter of law render him incompetent to act as her agent. The suit arose out of an injury to the wife by reason of a carpet tack imbedded in meat which the husband had bought, she alleged, as her agent. The Massachusetts court has overlooked a case which would seem to govern the situation, viz.: *Doran* v. *Thomsen*, 76 N. J. L. 754, 71 Atl. 296, 19 L. R. A. (N. S.) 335. There a father kept a car on the premises and his daughter was accustomed to drive it without his permission and did so causing damage. There was no evidence that she was actually employed. The court there denied an argument similar to the one allowed in our principal case, that, since the machine was bought for the daughter's use, it was the father's purpose that it should be so used and that such a use was in the father's business. The court insisted that the use which would make the father liable must be in furtherance of and not apart from his business. Had the Massachusetts court applied this rule which seems manifestly better in principle, they must have decided the principal case differently.

PARTNERSHIP—LEGAL ENTITY THEORY.—Defendant and plaintiff's husband were members of a partnership which was dissolved by the death of the latter. The defendant later formed a new firm and as surviving partner of the old firm, he sold to the new firm property of the old firm. In a suit by plaintiff for an accounting, the court instructed the jury that if they found the above facts to be true they should hold such sale invalid as having been made by defendant to himself. *Held*, this instruction was erroneous. *Morris* v. *Owen* (Tex. Civ. App. 1912) 143 S. W. 227.

PRESLER, J., in delivering the opinion of the court used the following language: "It being well settled that a firm or partnership is a legal entity of itself, existing separate and apart from the individuals composing it, we think that a transfer or sale made in good faith * * * should be sustained." The decision of the case is doubtless correct but it is difficult to concur in the reason given by the court. Previous to this decision the law seems to have been settled in Texas that a partnership is not a distinct and separate legal entity from that of the partners composing it. *Wiggins* v. *Blackshear*, 86 Tex. 665, 26 S. W. 939; *Glasscock* v. *Price* (1898) 92 Tex. 271, 47 S. W. 965;